STATE OF CONNECTICUT
EXECUTIVE CHAMBERS

M. JODI RELL
Governor

November 18, 2009

Dear Representative Hastings:

I submitted the attached testimony to the House Natural Resources Committee Hearing on the proposed amendment to the Indian Reorganization Act of 1934 (IRA), H.R. 3697 and H.R. 3742.

I strongly urge you to report unfavorably on this bill.

In my testimony, I proffer a number of arguments for why this proposed extension of the IRA to tribes recognized after 1934 is unnecessary and, in fact, potentially harmful to many states.

In short, all federally recognized tribes currently have the opportunity to both be heard and have land taken into trust by a transparent Congressional act. That process provides due process to all stakeholders. In contrast, this bill expands the Department of the Interior's authority. Expanding administrative oversight of land takings from states and current owners without a fair hearing by the very Department that is charged with a fiduciary responsibility for Indians and their land presents a clear conflict of interests and lack of due process. Further, unlike the benefits that would accrue to our Midwestern and Western sister states that have vast expanses of open, undeveloped land, the potential impact of many acres being taken into trust in more densely populated and developed areas like Connecticut is extraordinary.

The potential impact of this bill is particularly frightening to our communities on many levels. Please consider our concerns as you deliberate this bill.

Sincerely,

M. Jodi Rell

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Governor

Testimony of

Governor M. Jodi Rell
State of Connecticut

Submitted to the

United States House
Committee on Natural Resources

For November 4, 2009, Hearing on
H.R. 3697 and H.R. 3742
Amending the Indian Reorganization Act

November 18, 2009

Washington, DC

Testimony of
Governor M. Jodi Rell
State of Connecticut

Submitted to the House Committee on Natural Resources
Hearing on H.R. 3697 and H.R. 3742 - Amending the Indian Reorganization Act
November 18, 2009

Chairman Rahall and distinguished members of the Committee, I thank you for the opportunity during National American Indian and Alaskan Native Heritage Month to provide this written testimony concerning proposed bills H.R. 3697 and H.R. 3742.

In 2005, I appeared before the Senate Committee on Indian Affairs to discuss critical issues relating to federal Tribal recognition. I expressed appreciation for their united leadership in addressing the weaknesses and profound failings of the tribal recognition process. I also remarked that the process of federal recognition is admittedly lengthy and arduous – but for good reason. A successful petition for recognition, while serving as an official verification and validation of a historical group of people, dramatically and unalterably changes the present day landscape of an entire community, region and state.

Today, similarly, I must address the momentous impact of the proposed amendment to the Indian Reorganization Act of 1934. It would allow an appointed administrator, who is statutorily charged with a fiduciary responsibility for Indian land, to take state land into trust for a significantly different population and a different purpose than was originally intended by the underlying Congressional act. I strongly urge you to report unfavorably upon this bill.

Connecticut's history is inextricably intertwined with that of Native Americans. We recognize and embrace our shared heritage and have built mutually respectful relationships with the thriving Mohegan and Mashantucket Pequot Nations. Yet, we remain mindful of the possibility, indeed reality, of future land claims by these and other tribes from both within and beyond our borders.

Connecticut has had recent, multifarious experiences with such land claims. In fact, approximately one quarter of the land area of our entire state was placed in jeopardy by one such claim that accompanied the Golden Hill Paugussetts' unsuccessful federal recognition bid. This issue was very real to hundreds of thousands of Connecticut residents and business owners who lived under the constant threat of land claims and title concerns that languished for years. It was very real to the school systems and municipalities that would shoulder the exponentially reduced tax rolls and simultaneously increased infrastructure requirements. Local merchants' concern was palpable as they contemplated their potentially devastating disadvantage due to property and state sales tax collection. This issue continues to be very real for our Attorney General and other enforcement officers – civil, criminal, safety and environmental – throughout the state. In New York, the reality of land taken into trust, and in that instance used for gaming under the name of Turning Stone, has resulted in thirty years of unresolved conflicts to the detriment of municipalities.

The far-reaching implications of the proposed, seemingly insignificant, amendment to the Indian Reorganization Act are extraordinary.

In the wake of *Carcieri v. Salazar*, some have argued that the Secretary of the Interior's previous actions must be affirmed by Congressional act. This bill does not accomplish that goal. In fact, it expands the Secretary's authority. The very title of this proposed amendment to the Indian Reorganization Act of 1934 (the IRA) is a misnomer. This bill does *not* "reaffirm the authority of the Secretary of the Interior to take land into trust for Indian tribes." Rather, this bill inappropriately gives new, unbridled authority to the Secretary of the Interior to take sovereign land from states well beyond that which was explicitly intended by Congress in the IRA.

The IRA was enacted to right the wrongs of the 1887 General Allotment Act, which were visited upon federally recognized tribes. The Allotment Act and accompanying policies resulted in not only the devastating reduction of more than two-thirds of all tribal land but also the considerable accompanying displacement, social isolation, and enduring economic hardship of many tribal members. Via the IRA, Congress delegated authority to the Secretary of the Interior to take land into trust to help remediate the harm resulting from the pre-1934 flawed federal policy. As found by the United States Supreme Court in *Carcieri*, Congress intentionally selected the plain wording of "now under Federal jurisdiction" and "on June 1, 1934," to target Indian tribes that had been harmed by the Act and associated federal policy. It flies in the face of Congressional intent to now extend to any tribe recognized after June 1, 1934, this narrowly tailored delegation of Congressional authority.

In addition, the "equal treatment of tribes" is simply not the issue. It is disingenuous to suggest that the IRA by way of this amendment should *treat equally* all Indian tribes by replacing the term "any recognized Indian tribe now under Federal jurisdiction" with "any federally recognized Indian tribe." Tribes recognized after 1934, who were unharmed by the General Allotment Act, continue to have the opportunity to use other, more objective, transparent, fair, inclusive and, surprisingly, more efficient avenues to have land placed into trust – such as by Act of Congress, agreements with states, or other U.S. court actions. Indeed, Indian tribes have the current equal opportunity to seek Congressional approval to specifically authorize the Secretary to take particular land into trust – a process which has proven less arduous and time-consuming despite being more transparent and inclusive of all stakeholders.

The extension of the IRA to tribes recognized after 1934 would further threaten current property owners, localities, municipalities, and states with the loss of land, community, and income while potentially having to make up for income lost from the tax rolls. The Department of the Interior is not currently required to provide notice to the existing land owners, occupants, and relevant government bodies. There is no notice, no opportunity to be heard. These parties would have no recourse, no voice, no standing.

Whether Congress has unlawfully delegated its duty to the Secretary of the Interior is a question that will most assuredly be raised if this amendment goes forward. As representatives of the people, Congress can review and make informed, unbiased, open determinations about trust applications. In contrast, the Department of the Interior has been known to make arbitrary or biased decisions lacking in Congressional direction, and without guidelines, standards, and formal procedures. Clearly we can do better than having an unelected official making unfettered, closed-door, case by case decisions without providing basic due process to the parties that will be significantly harmed by the possible taking. This bill does not establish any direction or restraint upon the Secretary's unbridled discretion. By the Secretary's own practice, any standards can be waived. The Secretary's authority and practice compel a loss of public confidence.

By its very mission to honor its trust responsibilities or special commitments to American Indians, Alaska Natives, and affiliated Island Communities, the Department of the Interior has a clear fiduciary responsibility for the well-being of Native Americans – that of the tribes and the land. The Secretary's responsibility only to the Indians is an obvious bias and creates an ethical dilemma for the Secretary in its sole, unconditional, and unaccountable discretion to take land from other Americans and away from states. The Secretary cannot be simultaneously an Indian advocate and an impartial decision-maker on both recognition petitions and, even more importantly, land takings for trusts. These roles are inconsistent and incompatible. The bill would expand the Secretary's jurisdiction and result in a process that is neither fair nor accountable.

The extension of the IRA to tribes recognized after 1934 would further threaten current property owners, localities, municipalities, and states with the loss of land, community, and income while potentially having to provide additional infrastructure. The Department of Interior is not currently required to provide notice to the existing land owners, occupants, and relevant government bodies. There is no notice, no opportunity to be heard. These parties would have no recourse, no voice, no standing.

During the Hearing on this bill on November 4, 2009, the Department of the Interior could not produce an analysis of what tribes or tribal lands will be effected by the February 2009 *Carcieri* decision. How then, is it possible for this Department to support this bill as necessary to protect tribes put in a questionable position by the Supreme Court's decision?

The bills at issue were written in close consultation with and supported by tribal organizations, the National Congress of American Indians, United South and Eastern Tribes, Inc., and the Department of the Interior. The blatant bias of this bill must not be masked by rhetoric suggesting that this bill rights the wrong of the *Carcieri* decision and equalizes treatment of all tribes or remediates past injustices.

Lastly, this issue has support from some states that are interested in trading their land for economic windfalls. Unlike our Midwest and Western sister states, Connecticut is a geographically small, though densely populated state with few vast expanses of open, undeveloped land. Connecticut's historical reservations ceased to exist well over two hundred years ago. The land is now comprised of cities and towns, filled with family homes, churches, working farms, courts, non-profit organizations, schools, colleges, cemeteries, hospitals, shopping areas, and the like. While the Western and Midwestern states may be willing to give up their sovereign rights to large swaths of otherwise undeveloped land with short-sighted economic gains in mind, the potential impact of many acres being taken into trust in more densely populated areas is extraordinary. Currently, all federally recognized tribes have the ability to gain land in trust via Congressional act. That transparent, fair, and inclusive process permits input from the private owners, municipalities, counties, and states that will be impacted. The proposed bill has the potential to create upheaval in densely settled and developed regions such as Connecticut.

In closing, statements made in the hearing noted that members of this Committee were fully supportive of a fast-track bill. I strongly urge you to take pause. All Americans, as well as state and local governments, also need protection from Congress. While issues of past injustices must not be overlooked, I ask that you deal fairly with the Native American Tribes while balancing the practical impacts and respect for the localities, regions, counties, cities, states, and individual property owners.